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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590 02/20/2004			EXAMINER	
JoAnn Vilamizar Ciba Specialty Chemicals Corporation 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591-9005			KISHORE, GOLLAMUDI S	
			ART UNIT	PAPER NUMBER
			1615	
DATE MAILED: 02/20/2004				

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20040217

Application Number: 10/016,903
Filing Date: December 14, 2001
Appellant(s): HUGLIN ET AL.

MAILED

FEB 20 2004

GROUP 2900

Kevin T. Mansfield
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10-21-03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

Upon consideration, the following rejections were withdrawn:

1) 112, second paragraph rejection of claims 32-33 and 35-43;

2) 102 rejections of claims 32-33 and 35-43 based on EP 349150, EP 711557 and WO 96/371192;

3) 103 rejection of claims 32-33 and 35-43 over EP 711 557, WO 96/37192 and WO 97/21428.

The only rejection remaining is the 103 rejection of claims 32-33 and 35-43 over EP 0349 150.

(7) *Grouping of Claims:*

Claims 32-33 and 35-43 stand or fall together (last two lines on page 4 of appellant's brief.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

EP 0 349 150 A2	SHISEIDO COMPANY	1-1990
	LIMITED	

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 32-33 and 35-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0349150.

EP discloses instant formulations; the method of preparation involves mixing the lipophilic phase with the aqueous phase in a homomixer. The formulations contain a phospholipid, a polyoxyethylene co emulsifier, an oil (triglyceride) and a lower alcohol, ethanol production (note pages 3-4, Examples and claims). As seen from the examples, water phase is added to the lipophilic phase as opposed to instant method wherein the lipophilic phase is added to the water phase. However, in view of the final goal of mixing two phases in the prior art and in instant invention, it is deemed that the order of adding

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the two phases obvious manipulatable parameters. What is lacking in EP is the teaching of the entire claimed range of the claimed components. However, it is deemed obvious to vary the amounts of the components of the prior art with the expectation of obtaining the best possible results since the prior art cited provides guidance to one of ordinary skill in the art as to how to prepare the compositions.

Appellant's arguments have been fully considered, but are not found to be persuasive. Appellant argues that in EP, the water phase is added to the lipophilic phase as opposed to instant method wherein lipophilic phase is added to the water phase. This argument is not found to be persuasive. It is the examiner's position that whether water phase is added to the lipophilic phase or the lipophilic phase is added to water phase, the result, that is, mixing of the two phases would be the same. This step is deemed to be an obvious manipulatable step. Appellant argues that EP uses a homomixer. The examiner points out that instant claim 32 recites 'conventional stirring apparatus' and appellant has not shown a homomixer is not a conventional stirring apparatus. It is the position of the examiner that as the name 'homomixer' suggests it is an apparatus, which mixes two or more phases to form a homogenous mixture. Appellant argues that EP teaches pressure emulsification (after mixing with a homomixer) using Manton Gaulin. Appellant further argues that it is well known that Manton Gaulin is a high-pressure nozzle homogenizer, which generates intense shear.

Arguments are not found to be persuasive since EP on page 4, lines 29-35 states "The transparent composition of the present invention can be obtained


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by treating a mixed dispersion containing the above-mentioned essential components in an emulsifier, such as a homomixer, conventionally used in the production of cosmetics.

The transparency, safety, and stability of the transparent composition according to the present invention can be further improved when the mixture is treated in an emulsifier capable of providing a stronger shearing force than a conventional homomixer". Thus, it is clear from the reference that high shear forces are not necessary if the improvement is not desired.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

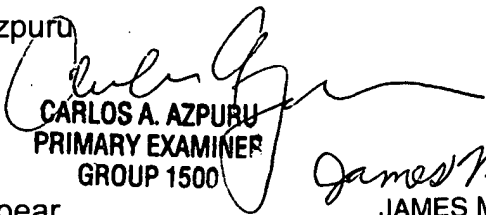

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February 18, 2004

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